

AMENDED IN SENATE JUNE 5, 2013

AMENDED IN ASSEMBLY MAY 13, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 164

**Introduced by Assembly Member Wieckowski
(Coauthor: Assembly Member Gorell)**

January 23, 2013

An act to amend Section 5956.6 of the Government Code, relating to infrastructure financing.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Wieckowski. Infrastructure financing.

Existing law permits a governmental agency to solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and may lease to, private entities, for specified types of fee-producing infrastructure projects. Existing law requires certain provisions to be included in the lease agreement between a governmental agency undertaking an infrastructure project and a private entity, as specified.

This bill would require a lease agreement between a governmental agency undertaking an infrastructure project and a private entity to include performance bonds as security to ensure the completion of the construction of the facility and payment bonds to secure the payment of claims of laborers, mechanics, and ~~materialmen~~ *materials suppliers* employed on the work under contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 5956.6 of the Government Code is amended to read:

5956.6. (a) For purposes of facilitating projects, the agreements specified in Section 5956.4 may include provisions for the lease of rights-of-way in, and airspace over, property owned by a governmental agency, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct infrastructure facilities supplemental to existing government-owned facilities. Infrastructure constructed by a private entity pursuant to this chapter shall, at all times, be owned by a governmental agency, unless the governmental agency, in its discretion, elects to provide for ownership of the facility by the private entity during the term of the agreement. The agreement shall provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the governmental agency at the expiration of the lease at no charge to the governmental agency. Subsequent to the expiration of the lease or ownership period, the governmental agency may continue to charge fees for use of the infrastructure facility. If, after the expiration of the lease or ownership period, the governmental agency continues to lease airspace rights to the private entity, it shall do so at fair market value.

(b) The agreement between the governmental agency and the private entity shall include, but need not be limited to, provisions to ensure the following:

(1) Compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with the act. However, appropriate compliance with the act shall thereafter occur before project development commences.

(2) Performance bonds as security to ensure completion of the construction of the facility and contractual provisions that are necessary to protect the revenue streams of the project.

(3) Adequate financial resources of the private entity to design, build, and operate the facility, after the date of the agreement.

1 (4) Authority for the governmental agency to impose user fees
2 for use of the facility in an amount sufficient to protect the revenue
3 streams necessary for projects or facilities undertaken pursuant to
4 this chapter. User fee revenues shall be dedicated exclusively to
5 payment of the private entity's direct and indirect capital outlay
6 costs for the project, direct and indirect costs associated with
7 operations, direct and indirect user fee collection costs, direct and
8 indirect costs of administration of the facility, reimbursement for
9 the direct and indirect costs of maintenance, and a negotiated
10 reasonable return on investment to the private entity.

11 (5) As a precondition to the imposition or increase of a user fee,
12 the governmental agency shall conduct at least one public hearing
13 at which public testimony will be received regarding a proposed
14 user fee revenue or increase in user fee revenues. The public
15 hearing shall precede the action by the governmental agency to
16 actually impose a user fee or to increase an existing user fee. The
17 governmental agency shall consider the public testimony prior to
18 imposing a new or increased user fee. The governmental agency
19 shall provide the following notices and utilize the following
20 procedures:

21 (A) Notice of the date, time, and place of the meeting, including
22 a general explanation of the matter to be considered, shall be mailed
23 at least 14 days prior to the meeting to any interested party who
24 files a written request with the governmental agency for mailed
25 notice of the meeting on new or increased fees or service charges.
26 Any written request for mailed notices shall be valid for one year
27 from the date on which it is filed unless a renewal request is filed
28 prior to the expiration of the one-year period for which the written
29 request was filed. The legislative body may establish a reasonable
30 annual charge for sending notices based on the estimated cost of
31 providing the service.

32 (B) At least 10 days prior to the meeting, the governmental
33 agency shall make available to the public data that supports the
34 amount of the fee or the increase in the fee.

35 (C) (i) At least 10 days prior to the meeting, the governmental
36 agency shall publish a notice in a newspaper of general circulation
37 in that agency's jurisdiction stating the date, time, and place of the
38 meeting, including a general explanation of the matter to be
39 considered.

1 (ii) Any costs incurred by the governmental agency in
2 conducting the meeting or meetings required by this section may
3 be recovered from fees charged for the services that are the subject
4 of the fee.

5 (iii) For transportation projects specifically authorized by this
6 chapter, at least 10 days prior to the meeting, the governmental
7 agency shall publish for four consecutive times, a notice in the
8 newspaper of general circulation in the affected area stating in no
9 smaller than 10-point type a notice specifying the subject of the
10 hearing, the date, time, and place of the meeting, and, in at least
11 8-point type, a general explanation of the matter to be considered.

12 (D) No local agency shall levy a new fee or service charge or
13 increase an existing fee or service charge to an amount that exceeds
14 the estimated amount required to provide the service for which the
15 fee or service charge is levied and a reasonable rate of return on
16 investment, pursuant to paragraph (4). Any action by a local agency
17 to levy a new fee or service charge or to approve an increase in an
18 existing fee or service charge pursuant to this chapter shall be taken
19 only by ordinance or resolution. The legislative body of a local
20 agency shall not delegate the authority to adopt a new fee or service
21 charge, or to increase a fee or service charge.

22 (6) Require that if the legislative body of the governmental
23 agency determines that fees or service charges create revenues in
24 excess of the actual cost for which the user fee revenues are
25 dedicated and a reasonable rate of return on investment, pursuant
26 to paragraph (4), those revenues shall either be applied to any
27 indebtedness incurred by the private entity with respect to the
28 project, be paid into a reserve account in order to offset future
29 operation costs, be paid into the appropriate government account,
30 be used to reduce the user fee or service charge creating the excess,
31 or a combination of these sources.

32 (7) Require the private entity to maintain the facility in good
33 operating condition at all times, including the time the facility
34 reverts to the governmental agency.

35 (8) Preparation by the private entity of an annual audited report
36 accounting for the income received and expenses to operate the
37 facility. The private entity shall make that report available to any
38 member of the public for a cost not to exceed the cost of
39 reproduction of the report.

1 (9) Provision for a buyout of the private entity by the
2 governmental entity in the event of termination or default before
3 the end of the lease term.

4 (10) Provision for appropriate indemnity promises between the
5 governmental agency and the private entity.

6 (11) Provision requiring the private entity to maintain insurance
7 with those coverages and in those amounts that the governmental
8 agency deems appropriate.

9 (12) In the event of a dispute between the governmental agency
10 and the private entity, both parties shall be entitled to all available
11 legal or equitable remedies.

12 (13) Payment bonds to secure the payment of claims of laborers,
13 mechanics, and ~~materialmen~~ *materials suppliers* employed on the
14 work under the contract. Payment bonds required under this
15 subdivision shall conform to the requirements of Sections 9550 to
16 9566, inclusive, of the Civil Code.